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7 ZITHROMIA LIMITED et al.,
8 Plaintiffs,
9 v.
10 GAZEUS NEGOCIOS DE INTERNET SA
et al.,
11 Defendants.

Case No. 17-cv-06475-JD

ORDER OF DISMISSAL

Re: Dkt. No. 84

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13 After the Court ordered discovery on the question of specific personal jurisdiction over
14 defendant Gazeus in this district, Dkt. No. 63, plaintiff Zithromia filed an amended complaint,
15 Dkt. No. 82. Zithromia has again failed to allege facts sufficient to plausibly demonstrate that the
16 Court has personal jurisdiction over Gazeus. Nothing in the amended complaint, or the record as a
17 whole before the Court, establishes any ties between the claims against Gazeus and defendant's
18 conduct in this forum. Consequently, Gazeus's motion to dismiss is granted. Dkt. No. 84.

19 The Court assumes the parties' familiarity with the record and will not repeat the detailed
20 discussion of the facts and governing case law in the prior order. After questioning whether
21 personal jurisdiction over Gazeus could be shown in this district, the Court gave Zithromia free
22 rein to look for evidence establishing a connection between Zithromia's claim of an improper
23 infringement notice under the Digital Millennium Copyright Act, 17 U.S.C. § 512(f), and
24 Gazeus's conduct in this forum. Dkt. No. 63 at 4-5. The discovery focused on Gazeus and non-
25 party Apple Inc. because Zithromia's main case theory is that Gazeus got Apple to take down
26 Zithromia's games from its platform in response to an arbitration award in Brazil. *See generally*
27 Dkt. No. 82. Zithromia had more than 90 days to pursue the jurisdictional discovery, and did not
28 ask to extend that time. In discovery dispute proceedings, the Court compelled Apple and Gazeus

1 to produce documents over their objections. Dkt. No. 76.

2 Even so, Zithromia's work apparently did not yield anything to show a plausible basis for
3 personal jurisdiction over Gazeus. If Gazeus had communicated or interacted with Apple in this
4 district as Zithromia contends, the discovery should have uncovered at least some evidence in the
5 form of a letter or email, meeting notes, travel records, or a host of other possibilities. But
6 Zithromia has not proffered a single document or fact gleaned from discovery to support its
7 allegation of personal jurisdiction. It again relies only on conclusory statements made on
8 information and belief, *see e.g.*, Dkt. No. 82 ¶¶ 24, 41, and other unsupported speculations about
9 alleged jurisdictional ties to this forum.

10 That will not do. In response to Gazeus's jurisdiction challenge, Zithromia had the burden
11 of demonstrating with facts, in a manner consistent with *Bristol-Myers Squibb Co. v. Superior*
12 *Court*, 137 S. Ct. 1773, 1780-81 (2017), and the other cases discussed in the prior order, that
13 personal jurisdiction was present. Dkt. No. 63 at 2-4; *see also Sharpe v. Puritan's Pride, Inc.*, No.
14 16-cv-06717-JD, 2019 WL188658, at *4-5 (N.D. Cal. Jan. 14, 2019). It has not done so, and its
15 exclusive reliance on Gazeus's general commercial conduct in California, or the foreseeability of
16 alleged harm here, even if taken as true, do not cure this deficiency. *Bristol-Myers Squibb Co.*,
17 137 S. Ct. at 1778; *McDonald v. Kiloo APS*, 385 F. Supp. 3d 1022, 1041-42 (N.D. Cal. 2019).

18 In light of the opportunity for discovery and the fact that Zithromia has already amended
19 the complaint once, the Court finds that further leave to amend is not warranted. *Nguyen Gardner*
20 *v. Chevron Capital Corp.*, No. 15-cv-01514-JD, 2016 WL 7888025, at *2 (N.D. Cal. July 19,
21 2016), *aff'd*, 715 F. App'x 737 (9th Cir. 2018) (unpublished). The case is dismissed for lack of
22 personal jurisdiction.

23 **IT IS SO ORDERED.**

24 Dated: November 21, 2019


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26 JAMES DONATO
27 United States District Judge
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